

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

ROBERT H. AYLOR, JR., On Behalf Of Himself : Civil Action No. 05-0222 (SLR)  
and All Others Similarly Situated, : Class Action

Plaintiff,

v.

XYBERNAUT CORPORATION, EDWARD G.  
NEWMAN, STEVEN A. NEWMAN, M.D., and  
THOMAS D. DAVIS,

Defendants.

---

MOSHE TAL, On Behalf Of Himself and All  
Others Similarly Situated,

Civil Action No. 05-0242 (SLR)  
Class Action

Plaintiff,

v.

XYBERNAUT CORPORATION, EDWARD G.  
NEWMAN, STEVEN A. NEWMAN, M.D., and  
THOMAS D. DAVIS,

Defendants.

---

[Captions Continued On Next Page]

**XYBERNAUT INVESTORS GROUP'S NOTICE OF  
CONDITIONAL WITHDRAWAL OF LEAD PLAINTIFF MOTION**

MICHAEL FEHRENBACHER, Individually and  
On Behalf Of All Others Similarly Situated,

Plaintiff,

v.

XYBERNAUT CORPORATION, EDWARD G.  
NEWMAN, STEVEN A. NEWMAN, M.D., and  
THOMAS D. DAVIS,

Defendants.

Civil Action No. 05-0256 (SLR)  
Class Action

JEFFREY M. JASKOL AND STACEY J.  
JASKOL, Individually and On Behalf Of All  
Others Similarly Situated,

Plaintiffs,

v.

XYBERNAUT CORPORATION, EDWARD G.  
NEWMAN, STEVEN A. NEWMAN, THOMAS  
D. DAVIS, BRUCE C. HAYDEN, and  
GRANT THORNTON LLP,

Defendants.

Civil Action No. 05-0268 (SLR)  
Class Action

JOSEPH DANIEL WAUHOP, On Behalf Of  
Himself and All Others Similarly Situated,

Plaintiff,

v.

XYBERNAUT CORPORATION, EDWARD G.  
NEWMAN, STEVEN A. NEWMAN, M.D.,  
THOMAS D. DAVIS, JOHN F. MOYNAHAN,  
and GRANT THORNTON, LLP,

Defendants.

Civil Action No. 05-0310 (SLR)  
Class Action

[Captions Continued On Next Page]

CHRISTINA W. DONNELLY, JOHN	:	
DONNELLY, JAMES G. WILLIAMSON, and	:	
RICHARD W. DEARBORN,	:	
	:	
Plaintiffs,	:	
v.	:	
	:	
XYBERNAUT CORPORATION, EDWARD G.	:	
NEWMAN, STEVEN A. NEWMAN, THOMAS	:	
D. DAVIS, BRUCE C. HAYDEN, and	:	
GRANT THORNTON LLP,	:	
	:	
Defendants.	:	
	:	

Civil Action No. 05-0334 (SLR)  
Class Action

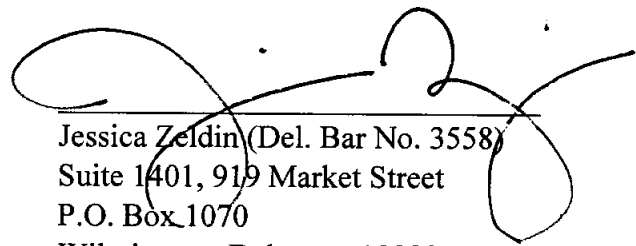
PLEASE TAKE NOTICE that Individual investors, Donald T. Ogle, Jr., Wei Wang, Tom Johnson, Michael Taylor, and Robert A. Schultz (collectively, the “Xybernaut Investors Group”), hereby submit this Conditional Withdrawal of Lead Plaintiff Motion.

On June 14, 2005, pursuant to § 27(a)(3)(B) of the Securities Act of 1933 (the “Securities Act”), as amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), 15 U.S.C. § 77z-1(a)(3)(B), the Xybernaut Investors Group moved for appointment as lead plaintiff in connection with the above-captioned securities fraud class actions (Aylor D.I. 4; Tal D.I. 8; Fehrenbacher D.I. 7; Jaskol D.I. 11; Wauhup D.I. 6; Donnelly D.I. 4; Smith D.I. 5). Three other groups, only one of which asserted losses greater than the Xybernaut Investors Group, also moved for appointment as lead plaintiff: the Al Mesnad Group (consisting of four individuals with combined losses of \$853,508); the James Group (consisting of five individual investors with combined losses of \$427,000); and the Fehrenbacher

Shareholder Group (consisting of three members with combined losses of \$381,000).

The PSLRA provides that there is a presumption that “the most adequate plaintiff ... is the person or group of persons” that, *inter alia*, “has the largest financial interest in the relief sought by the class.” 15 U.S.C. § 77z-1(a)(3)(B)(iii). In recognition of the amount of the Al Mesnad Group’s combined losses, and in light of the most recent submission to the Court by the Al Mesnad Group in support of its motion for lead plaintiff, the Xybernaut Investors Group conditionally withdraws its motion and respectfully submits that the Al Mesnad Group should be appointed as lead plaintiff.<sup>1</sup>

ROSENTHAL, MONHAIT, GROSS  
& GODDESS, P.A.



Jessica Zeldin (Del. Bar No. 3558)  
Suite 1401, 919 Market Street  
P.O. Box 1070  
Wilmington, Delaware 19899  
(302) 656-4433  
[jzeldin@rmgglaw.com](mailto:jzeldin@rmgglaw.com)  
Counsel for Movant

OF COUNSEL:

James E. Miller  
Patrick A. Klingman  
Karen M. Leser  
SHEPHERD, FINKELMAN, MILLER & SHAH, LLC  
65 Main Street  
Chester, Connecticut 06412  
(860) 526-1100

---

<sup>1</sup>In the event that the Court were to determine that the Al Mesnad Group is not the appropriate group to serve as lead plaintiff, the Xybernaut Group, as the movant with the second largest loss, stands ready to serve as lead plaintiff.

Scott R. Shepherd  
James C. Shah  
SHEPHERD, FINKELMAN, MILLER & SHAH, LLC(610) 891-9880  
35 East State Street  
Media, Pennsylvania 19063  
(610) 891-9890  
(610) 891-9883 (facsimile)

Andrew M. Schatz  
Jeffrey S. Nobel  
SCHATZ & NOBEL, P.C.  
One Corporate Center  
20 Church Street  
Hartford, Connecticut 06103  
(860) 493-6292

July 5, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that on July 5, 2004, I electronically filed XYBERNAUT INVESTORS GROUP'S NOTICE OF CONDITIONAL WITHDRAWAL OF LEAD PLAINTIFF MOTION TO ANSWER OR OTHERWISE RESPOND using CM/ECF, which will send notification of such filing, to the following:

Seth D. Rigradsky  
MILBERG WEISS BERSHAD  
& SCHULMAN, LLP  
919 North Market Street, Suite 411  
Wilmington, Delaware 19801  
srigrodsky@milbergweiss.com

Michael F. Bonkowski  
SAUL EWING LLP  
222 Delaware Avenue Suite 1200  
P.O. Box 1266  
Wilmington, Delaware 19899-1266  
mbonkowski@saul.com

Robert R. Davis  
CHIMICLES & TIKELLIS, LLP  
One Rodney Square  
P.O. Box 1035  
Wilmington, Delaware 19899  
robertdavis@chimicles.com

Laurence V. Cronin  
SMITH, KATZENSTEIN & FURLOW  
The Corporate Plaza  
800 Delaware Avenue P.O. Box 410  
Wilmington, Delaware 19899  
lcronin@skfdelware.com

J. Clayton Athey  
PRICKETT JONES & ELLIOTT, P.A.  
1310 King Street  
P.O. Box 1328  
Wilmington, DE 19899  
jcahey@prickett.com

Michael A. Weidinger  
MORRIS JAMES HITCHENS & WILLIAMS  
222 Delaware Avenue, 10<sup>th</sup> Floor  
P.O. Box 2306  
Wilmington, DE 19899  
mweidinger@morrisjames.com

David Phillip Primack  
DRINKER BIDDLE & REATH LLP  
1100 North Market Street, Suite 1000  
Wilmington, DE 19801  
david.primack@dbr.com

I hereby certify that on July 5, 2005, I have caused to be sent via first class mail, a copy of the same document to the following non-registered participants:

William B. Federman  
FEDERMAN & SHERWOOD  
120 North Robinson Avenue, Suite 2720  
Oklahoma City, OK 73102

Joseph Genitle  
SARRAF GENTILE LLP  
111 John Street, 8<sup>th</sup> Floor  
New York, NY 10038

John M. Tran  
DiMURO GINSBERG, P.C.  
908 King Street Suite 200  
Alexandria, Virginia 22314

Eric Belfi  
MURRAY, FRANK & SAILER, LLP  
275 Madison Avenue  
New York, NY 10016

Robert Plotkin  
McGUIRE WOODS LLP  
Washington Square  
1050 Connecticut Avenue, NW  
Suite 1200  
Washington, DC 20036-5317

Michael Goldberg  
GLANCY BINKOW & GOLDBERG LLP  
1801 Avenue of the Stars, Suite 311  
Los Angeles, CA 90067

Robert E. Scully, Jr.  
REES, BROME & DIAZ, P.C.  
8133 Leesburg Pike, Ninth Floor  
Tysons Corner, Virginia 22182

William E. Donnelly  
LECLAIR RYAN, P.C.  
1701 Pennsylvania Ave, N.W. Suite 1045  
Washington, D.C. 20006

Steven J. Toll  
COHEN, MILSTEIN, HAUSFELD & TOLL,  
PLLC  
1100 New York Avenue, N.W.  
Suite 500, West Tower  
Washington, DC 20005

John F. Moynahan  
10829 Fieldwood Drive  
Fairfax, VA 22030-4550

Robert M. Roseman  
SPECTOR ROSEMAN & KODROFF, P.C.  
1818 Market Street, Suite 2500  
Philadelphia, PA 19103

Andrew J. Morris  
MAYER, BROWN, ROWE & MAW  
1909 K Street, N.W.  
Washington, DC 20006-1101

Joseph H. Weiss  
WEISS & LURIE  
551 Fifth Avenue  
New York, NY 10176

Susan Kennedy  
DRINKER BIDDLE & REATH LLP  
One Logan Square  
18<sup>th</sup> and Cherry Streets  
Philadelphia, Pennsylvania 19103-6996

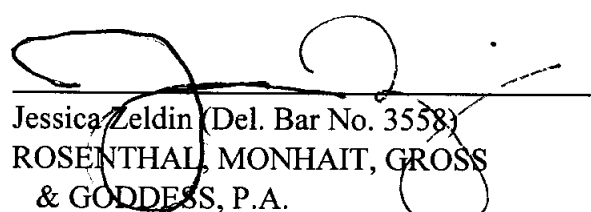
Bruce Murphy  
LAW OFFICES OF BRUCE MURPHY  
265 Lwyds Lane  
Vero Beach, Florida 32963

Jules Brody  
STULL, STULL & BRODY  
5 East 45<sup>th</sup> Street  
New York, NY 10017

Jack Landskroner  
Paul Greico  
LANDSKRONER, GREICO, MADDEN, LTD.  
1360 West 9<sup>th</sup> Street, Suite 200  
Cleveland, OH 44113

Thomas A. Holman  
HOLMAN LAW OFFICE  
One Pennsylvania Plaza  
Suite 4632  
New York, NY 10117

Andrew M. Schatz  
Jeffrey S. Nobel  
SCHATZ & NOBEL, P.C.  
One Corporate Center  
20 Church Street  
Hartford, Connecticut 06103



Jessica Zeldin (Del. Bar No. 3558)  
ROSENTHAL, MONHAIT, GROSS  
& GODDESS, P.A.  
Suite 1401, 919 N. Market Street  
P.O. Box 1070  
Wilmington, Delaware 19899  
(302) 656-4433  
jzeldin@rmgglaw.com